Bilingual Ballots in Puerto Rico
Diffenderfer v. Gómez-Colón
(José Antonio Fusté, D.P.R. 3:08-cv-1918)

Three weeks before ballots needed to be printed for a 2008 election, a federal complaint objected to Puerto Rico's ballots and their instructions being provided only in Spanish. The court certified the case as a class action and ordered that ballots be printed in both Spanish and English. While an appeal was pending, Puerto Rico enacted legislation requiring bilingual ballots in future elections.

Subject: Voting procedures. *Topics:* Ballot language; class action; attorney fees; case assignment.

Two voters filed a federal complaint against members of Puerto Rico's election commission on August 19, 2008, objecting to Puerto Rico's ballots and their instructions being provided only in Spanish.[1]

The court assigned the case to Judge Daniel R. Domínguez, who reassigned the case on August 20 to Judge José Antonio Fusté because only three weeks remained before ballots needed to be printed and Judge Domínguez was already presiding over injunctive hearings in other cases.[2] That same day, Judge Fusté ordered the defendants to show cause at a hearing on August 27 why the plaintiffs should not be granted the relief that they sought.[3]

Following the hearing, Judge Fusté ordered that the ballots be printed in both Spanish and English because "the Spanish-only ballots violate the Voting Rights Act, the Equal Protection Clause, and the First Amendment."[4] Six days later, Judge Fusté issued a published opinion supporting his ruling.[5]

Judge Fusté also certified the case as a class action on behalf of monolingual English speakers eligible to vote in Puerto Rico.[6]

In its pre-hearing brief and initially during the show-cause hearing, Defendants sought to establish that it would be impossible to print bilingual ballots in time for the November 2008 election. However, . . . the manager of the printing company that has been contracted to print the 2008 ballots

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1. Complaint, Diffenderfer v. Gómez-Colón, No. 3:08-cv-1918 (D.P.R. Aug. 19, 2008), D.E. 1; Diffenderfer v. Gómez-Colón, 587 F.3d 445, 449 (1st Cir. 2009); Diffenderfer v. Gómez-Colón, 587 F. Supp. 2d 338, 340–42 (D.P.R. 2008).

2. Transfer Order, *Diffenderfer*, No. 3:08-cv-1918 (D.P.R. Aug. 20, 2008), D.E. 4. Judge Fusté retired on June 1, 2016. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

3. Order, *Diffenderfer*, No. 3:08-cv-1918 (D.P.R. Aug. 20, 2008), D.E. 5; *see Diffenderfer*, 587 F. Supp. 2d at 342.

4. *Diffenderfer*, 587 F. Supp. 2d at 343; *see* Minutes, *Diffenderfer*, No. 3:08-cv-1918 (D.P.R. Aug. 27, 2008), D.E. 33; *Diffenderfer*, 587 F.3d at 449; *see also* Jeannette Rivera-Lyles, *Puerto Rico Battles Order to Print English Ballots, Too*, Orlando Sentinel, Sept. 10, 2008, at A1.

5. *Diffenderfer*, 587 F. Supp. 2d 338; *Diffenderfer*, 587 F.3d at 449.

6. *Diffenderfer*, 587 F. Supp. 2d at 343.

. . . testified that he could print bilingual ballots in time, at an additional cost.[7]

In 2009, Judge Fusté awarded the plaintiffs $67,550.34 in attorney fees.[8]

While an appeal was pending, Puerto Rico enacted legislation requiring bilingual ballots in future elections.[9] The court of appeals affirmed the fee award.[10]

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7. *Id.* at 342.

8. Diffenderfer v. Gómez-Colón, 606 F. Supp. 2d 222 (D.P.R. 2009); *Diffenderfer*, 587 F.3d at 449–50 & n.2.

9. *Diffenderfer*, 587 F.3d at 449–50.

10. *Id.* at 452–56.